IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE MR.JUSTICE S.SIRI JAGAN

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 382 of 2007(U)

PETITIONER:

K.ANIL KUMAR, S/O. KARTHIKEYAN,
AGED 48 YEARS,
GANDHI SADANAM,KARETTE,
VAMANAPURAM,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

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1. RESERVE BANK OF INDIA,
6, SANSAD MARG, NEW DELHI - 110 001,
REP. BY ITS CHAIRMAN.

2. THE SOUTH INDIAN BANK LIMITED,
HAVING REGISTERED OFFICE AT THRISSUR AND
REGIONAL OFFICE AT HOTEL SAFA INTERNATIONAL
BUILDING, THIRUVANANTHAPURAM-695 014,
REP. BY ITS CHIEF MANAGER.

BY ADV. SRI.K.PRABHAKARAN, SC,SOUTH INDIAN BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.5059/2007 IN W.P.(C)NO.382/2007

DISMISSED

10/4/2007 SD/-S.SIRI JAGAN,JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF DECREE DTD.28.2.2006 IN O.S.NO.26/2003 ON THE FILE OF THE SUB COURT, ATTINGAL.

EXT.P2 PHOTOCOPY OF NTOICE NO.TVM/RN/LEG/SN/162/06-07 DTD.17.11.2006 OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER AND OTHERS.

EXT.P3 PHOTOCOPY OF REPLY DTD.8.12.2006 SUBMITTED BY KUNJULEKSHMI BEFORE THE 2ND RESPONDENT.

EXT.P4 PHOTOCOPY OF LETTER DTD.12.12.2006 ISSUED BY THE SECOND RESPONDENT TO KUNJULEKSHMI.

TRUE COPY

P.A.TO JUDGE

S.SIRI JAGAN, J

W.P.(C)NO.382 of 2007

Dated this the 10th day of April, 2007

JUDGMENT

The petitioner, a defaulter in the repayment of loan amounts due from the second respondent challenges proceedings initiated by the second respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(Act). They raised three contentions. First is that the bank has already obtained a decree and execution of the said degree is in progress. Therefore a parallel initiation of proceedings for execution of the decree under the Act is not permissible. Second contention is that since the security interest is an agricultural property and the Act itself excludes the application of the Act to agricultural properties, the proceedings initiated are without jurisdiction.

2. I have heard the learned counsel for the petitioner as also the learned Standing Counsel appearing for the second respondent. The second respondent is a schedule bank which is

not a nationalised bank. Neither the Government nor any other governmental institution has any share or interest in the second respondent bank. As such, no writ petition under Article 226 of the Constitution of India would be maintainable against the second respondent bank except in respect of a public function by the 2nd respondent bank. Recovery of loan amounts due by resort to proceedings under the Act cannot be stated to be a public function which attracts jurisdiction under Article 226 of the Constitution of India.

Secondly, it is settled law as decided by a Division Bench of this Court that even when a suit for realisation of the amount is pending proceedings under the Act, which is maintainable, of course, the learned counsel for the petitioner submits that the bank has tried to execute the decree by resorting to proceedings under the Act. I do not see the difference in the same simply because in Ext.P2 notice, the amount due is shown as a decree debt as per the suit that does not make the proceedings initiated under the Act as one in execution of the decree itself. Admittedly, Ext.P2 is a notice issued under the Act. That being so, just

because a decree has been passed and that the decreetal amount has been shown as the amount due in that notice, the notice is not in any way vitiated.

In so far as the contention regarding the security interest being agricultural property, I am afraid that I cannot go into the question except by taking evidence which I cannot do in proceedings under Article 226 of the Constitution of India. Further, a petitioner has an effective alternate remedy by way of filing an appeal before the Debt Recovery Tribunal to establish his case in that respect also. Without prejudice to such right, this writ petition is dismissed for all the above reasons.

S.SIRI JAGAN, JUDGE

CSS